

Amendment No. 2 to SB2109

Johnson
Signature of Sponsor

AMEND Senate Bill No. 2109

House Bill No. 2105*

by deleting all language after the caption and substituting instead the following:

WHEREAS, with more than 50 million Americans playing fantasy sports, today's sports fans spend as much time predicting the performance of professional athletes as Wall Street investors spend predicting stocks and bonds; and

WHEREAS, seasonal fantasy sports leagues that initially allocate players not using an auto draft system involve games that are driven primarily based on skill, rather than chance; and

WHEREAS, there remains a need to protect Tennesseans from potential risks involved in fantasy sports contests and to prevent the unauthorized and unregulated spread of gambling; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 18, is amended by adding the following language as a new, appropriately designated part:

47-18-5601. This part shall be known and may be cited as the "Fantasy Sports Act".

47-18-5602. For purposes of this part:

(1) "Athlete" means an individual whom a player selects for the player's imaginary teams for purposes of playing a fantasy sports contest;

(2) "Auto draft" means athlete selection offered by a fantasy sports operator that does not involve any input or control by a player;

(3) "Beginning player" means any player who has entered fewer than fifty-one (51) contests offered by a single fantasy sports operator;

(4) "Consumer" has the same meaning as defined in § 47-18-103;

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(5) "Entry fee" means any valuable consideration, including, but not limited to, cash or a cash equivalent, that a fantasy sports operator requires in order to participate in a fantasy sports contest;

(6) "Fantasy sports contest":

(A) Means an online simulated game:

(i) In which players are subject to an entry fee to assemble imaginary teams of athletes;

(ii) In which players are offered an award or prize made known to the players in advance of the online simulated game; and

(iii) The winning outcome of which reflects in part the relative knowledge and skill of the participants and is determined predominantly by the accumulated statistical results of the performance or finishing position of athletes in underlying amateur or professional competitions; and

(B) Does not include:

(i) A contest in which the operator allows the players to auto draft athletes or to choose between pre-selected teams of athletes;

(ii) A contest that offers or awards a prize to the winner of, or athletes in, the underlying competition itself; or

(iii) A contest where the winning outcome is based on the score, point spread, or any performance or performances of any single actual

team or combination of teams or solely on any single performance of an athlete or participant in any single actual event;

(7) "Fantasy sports contest platform" means any online method by which access to a fantasy sports contest is provided;

(8) "Fantasy sports operator" means a person that offers fantasy sports contests through an online digital platform;

(9) "Fantasy sports operator contractor" means any person or entity who works pursuant to an independent contract with a fantasy sports operator and who has access to nonpublic portions of the fantasy sports operator's office, the fantasy sports operator's nonpublic computer network, or the fantasy sports operator's proprietary information that may affect how the fantasy sports contest is played;

(10) "Highly experienced player" means a person who has either:

(A) Entered more than five hundred (500) contests offered by a single fantasy sports operator; or

(B) Won more than five (5) fantasy sports prizes, and the total value of the prizes is two thousand five hundred dollars (\$2,500) or more;

(11) "Knowingly" means to have known or should have known;

(12) "Minor" means any person under eighteen (18) years of age;

(13) "Person" has the same meaning as defined in § 47-18-103;

(14) "Player" means a person who participates in a fantasy sports contest offered by a fantasy sports operator;

(15) "Private contest" means a fantasy sports contest established among players known to each other and the terms and any prize of which are not established by a fantasy sports operator;

(16) "Prize" means a prize, award, incentive, promotion, or anything of value, including, but not limited to, money, contest credits, merchandise, or admission to another fantasy sports contest;

(17) "Script" means a list of commands that a fantasy-sports-related computer program can execute and that is created by players, or by third parties for the use of players, to automate processes on a fantasy sports contest platform; and

(18) "Tennessee consumer" means a consumer located in this state at the time the person enters a fantasy sports contest.

47-18-5603.

(a) It shall be a violation of § 39-17-503 for any person to offer fantasy sports contests through an online digital platform that enables Tennessee consumers to participate in such contests without that person being licensed as a fantasy sports operator by the secretary of state.

(b) Any person seeking to be a licensed fantasy sports operator shall submit an application, along with the required fee, to the secretary of state. The applicant shall provide sufficient documentation to the secretary of state to assure that such applicant meets the requirements for licensure, including, but not limited to:

(1) The name of the applicant;

(2) The location of the applicant's principal place of business;

(3) A complete disclosure of the true ownership of the applicant, as determined by the secretary of state;

(4) The applicant's criminal record, if any, or if the applicant is a business entity, the criminal records, if any, of any person owning a significant ownership interest in the applicant, as determined through rule by the secretary of state;

(5) Any ownership interest held by a director, officer, policy-making manager, or principal stockholder in any entity previously or currently licensed by another entity that licenses fantasy sports operators or similar entities;

(6) A description of any physical facility operated by the fantasy sports operator in this state, the facility's employees, and the nature of the facility's business;

(7) Information sufficient to show, as determined by the secretary of state, that the applicant:

(A) Limits individual player deposits to no more than two thousand five hundred dollars (\$2,500) per month, unless the player provides reasonable certification or proof, including the types of certifications used to qualify accredited investors as defined in § 48-1-102, to the fantasy sports operator that the player's deposit limit should be increased;

(B) Protects player funds on deposit by, at a minimum:

(i) Segregating player funds from operating funds;

and

(ii)

(a) Maintaining a reserve for the benefit and protection of authorized players' funds in fantasy sports accounts;

(b) The amount and form of the reserve shall be set forth in rules promulgated by the secretary of state; and

(C) Limits each player to one (1) active and continuously used account by:

(i) Verifying each player's true identity and location using commercially reasonable means;

(ii) Closing each account previously held by a player when a new account is opened by that same player while carrying over any designations applicable to that account;

(iii) Using technologically reasonable measures to prevent the use of proxy servers; and

(iv) Using technologically reasonable measures to detect and prevent the use of a player's account by other players;

(8) Information sufficient to show that the applicant is in good standing with the department of revenue; and

(9) Any other information the secretary of state deems necessary.

(c) In order to maintain a fantasy sports operator license, the licensee shall maintain records of all player accounts, retain such records for five (5) years from the date the account was created, and submit annual reports of all fantasy sports accounts opened or maintained by Tennessee consumers to the secretary of state, including the following information:

(1) All account transactions;

(2) All winnings by Tennessee consumers;

(3) The amount in accounts opened or maintained by Tennessee consumers; and

(4) All fantasy sports operator revenue derived from Tennessee consumer accounts and transactions.

47-18-5604.

(a) The secretary of state shall carry out the duties assigned pursuant to this part, including the following:

(1) Oversee the licensure of fantasy sports operators that seek to operate in this state;

(2) Require that all licensed fantasy sports operators contract annually with a third party to perform an independent audit, consistent with the standards established by the public company accounting oversight board, to ensure compliance with this part. Upon completion of the audit, the audit records shall be submitted to the secretary of state for examination and inspection. These records shall be confidential and shall not be open to public inspection pursuant to title 10, chapter 7;

(3) Provide information to the department of revenue to assist in its administration and collection of taxes applicable to fantasy sports operators;

(4) Require fantasy sports operators to report annually all winnings earned by fantasy sports players on online platforms supported by the fantasy sports operator to the secretary of state;

(5) Maintain a registry of fantasy sports operators licensed to operate in this state;

(6) Conduct investigations regarding alleged violations of §§ 47-18-5603, 47-18-5604, and 47-18-5608 and make evaluations as necessary to determine if licensees are complying with this part;

(7) Issue subpoenas to compel the attendance of witnesses and the production of pertinent books, accounts, records, and documents; and

(8) Deny, suspend, or revoke a license issued under this part to any applicant or licensee who fails to comply with this part or fails to follow the rules promulgated by the secretary of state.

(b)

(1) In addition to the duties set out in subsection (a), the secretary of state shall establish the following fees:

- (A) A nonrefundable application fee;
- (B) A nonrefundable fee for licensure;
- (C) An annual licensure renewal fee;
- (D) Late fees;
- (E) A correction of information fee; and
- (F) A change of information fee.

(2) In addition to the fees authorized in subdivision (b)(1), the secretary of state is authorized to charge an online transaction fee to cover costs associated with processing payments for applications for licensure or renewals of licensure submitted online.

(3) Except as provided in this subsection (b), no other fees shall be charged to administer this part.

47-18-5605.

(a) In addition to the requirements of licensure set out in § 47-18-5603, fantasy sports operators shall comply with the following requirements:

(1) Fantasy sports operators shall not directly or indirectly operate or promote to Tennessee consumers any fantasy sports contest without a valid license obtained pursuant to this part;

(2) Fantasy sports operators shall not operate or promote, in whole or in part, fantasy sports contests from this state to consumers outside of this state without a valid license obtained pursuant to this part;

(3) Fantasy sports operators shall not offer auto draft to players or allow players to select from pre-selected teams of athletes in fantasy sports contests;

(4) Fantasy sports operators shall not knowingly allow a minor to participate in any fantasy sports contest, which includes:

(A) If a fantasy sports operator becomes or is made aware that a minor has participated in one (1) of its fantasy sports contests, the fantasy sports operator shall promptly, within no more than three (3) business days, refund any deposit received from the minor, whether or not the minor has engaged in or attempted to engage in a fantasy sports contest; provided, however, that any refund may be offset by prizes already awarded;

(B) Fantasy sports operators shall clearly and conspicuously publish and facilitate parental control procedures to allow parents or guardians to exclude minors from access to any fantasy sports contest. These procedures shall include a toll free number to call for help in establishing such parental controls; and

(C) Fantasy sports operators shall take all commercially reasonable steps to confirm that an individual opening an account is not a minor;

(5) Fantasy sports operators shall not knowingly offer fantasy sports contests based on high school or college sporting events or sports whose participants are predominantly minors. For purposes of this subdivision (a)(5), "predominantly" means greater than fifty percent (50%);

(6) Fantasy sports operators' advertisements for fantasy sports contests shall not target minors. For purposes of this subdivision (a)(6):

(A) Advertisements that target minors are:

(i) Publications or media aimed exclusively or primarily at minors;

(ii) Advertisements or promotional activities
at schools or school or amateur sporting events;

(iii) Advertisements that depict cartoon
characters, minors, students, or school or college settings;
or

(iv) Advertisements that state or imply
endorsement by minors; and

(B) "School or amateur sporting events" include school or
amateur sporting events held at venues not primarily used for amateur or
school events; provided, however, if permanent or semi-permanently
placed advertisements in such venues cannot reasonably be removed or
covered, a fantasy sports operator shall not be in violation of this
subdivision (a)(6);

(7) Fantasy sports operators' advertisements for fantasy sports contests
shall clearly and conspicuously depict accurate representations concerning
chances of winning and the number of persons winning;

(8) Fantasy sports operators' representations or implications about
average winnings from fantasy sports contests shall not be unfair or misleading.
Such representations shall include, at a minimum, the average net winnings of all
players participating in fantasy sports contests offered by the single fantasy
sports operator and the percentage of winnings awarded by the single fantasy
sports operator to highly experienced players participating in that operator's
fantasy sports contests;

(9) Fantasy sports operators shall comply with the Federal Trade
Commission, Guides Concerning Use of Endorsements and Testimonials in
Advertising, compiled in 16 CFR § 255;

(10)

(A) Fantasy sports operators' advertisements for fantasy sports contests shall, where feasible, clearly and conspicuously disclose information concerning assistance available to problem gamblers, including information directing problem gamblers to reputable resources containing further information. Such information shall be available free of charge during all times the fantasy sports operator is open for accepting entry fees and shall include a toll free number that persons may use to seek assistance; and

(B) When information concerning resources for problem gamblers as required by subdivision (a)(10)(A) cannot be presented in the advertisement itself, the information shall be clearly and conspicuously disclosed on the web site to which the advertisement directs consumers, and be visible before the consumer is directed to establish an account, otherwise register with the fantasy sports operator, or log-in to an existing account;

(11) Fantasy sports operators shall implement and enforce procedures for fantasy sports contests that:

(A) Are clearly and conspicuously disclosed and featured in all fantasy sports contest platforms; and

(B) Enable players to exclude themselves from contests and establish self-imposed deposit limits, limits on entry fees per fantasy sports contest, or limits on total potential losses permissible in a given period;

(12) Fantasy sports operators shall not knowingly advertise any contest or prize directly to a player by any means if that player is self-excluded from that prize or contest or otherwise barred from playing in that contest;

(13) Fantasy sports operators shall protect player funds on deposit. At a minimum, each fantasy sports operator shall:

(A) Implement, clearly and conspicuously disclose to consumers, and follow:

(i) Procedures that prevent unauthorized withdrawals from player accounts by fantasy sports operators or others; and

(ii) Procedures for reporting and responding to complaints by a player regarding the handling of the player's accounts;

(B) Implement, clearly and conspicuously disclose, and follow procedures that allow a player to permanently close the player's account at any time and for any reason, except if such closure is for the purposes of circumventing this part;

(C) Promptly distribute any prize awarded to a player;

(D) Return all funds from a closed account to the account holder within five (5) business days; and

(E) Notify the account holder that the account has been closed when an account has been closed due to inactivity;

(14) Fantasy sports operators shall prohibit all fantasy sports operator employees, fantasy sports operator contractors, and any spouse, children, or parents of any fantasy sports operator employee or contractor from participating in any fantasy sports contest involving a prize over five dollars (\$5.00) offered by

any fantasy sports operator, except such individuals may play in a private contest on a fantasy sports contest platform in which the affiliation is clearly and conspicuously disclosed to each player, and the restrictions set out in this subdivision (a)(14) are made known to the affected persons. This subdivision (a)(14) does not prohibit fantasy sports operator employees from utilizing test accounts solely in order to measure and assess the functionality of their products; provided, that these accounts must be closely monitored for any unauthorized use;

(15) Fantasy sports operators shall prohibit the disclosure of proprietary and nonpublic information by all fantasy sports operator employees and fantasy sports operator contractors that may affect the result of a fantasy sports contest to any person permitted to engage in fantasy sports contests;

(16) Fantasy sports operators shall not knowingly allow the following persons to participate in fantasy sports contests based on the sports in which the person participates or is otherwise associated:

(A) Professional and amateur athletes whose individual statistics or performance may be used to determine any part of the outcome of any fantasy sports contest; and

(B) Any sports agent, team employee, referee, or league official associated with any athletic competition that is the subject of fantasy sports contests;

(17)

(A) Fantasy sports operators shall not knowingly allow a player to enter a game or contest after that player has been provided with proprietary or nonpublic information that may affect the result of a fantasy

sports contest by an athlete, sports agent, team employee, referee, or league official;

(B) A fantasy sports operator shall regularly monitor its fantasy sports contests for evidence of activity that indicates that a player has access to proprietary or nonpublic information; and

(C) On learning of a violation of this subdivision (a)(17), the fantasy sports operator shall permanently bar the player from participating in any fantasy sports contest operated by the fantasy sports operator and close the player's account;

(18) Fantasy sports operators shall offer introductory procedures for fantasy sports contests for beginning players, which shall be clearly and conspicuously displayed on the main pages of the web site explaining contest play, how to identify highly experienced players, and recommending beginning-player-only contests and low-cost private contests;

(19) Fantasy sports operators shall clearly and conspicuously identify highly experienced players in fantasy sports contests by a symbol attached to a player's username, or by other easily visible means, on all fantasy sports operator contest mediums and platforms;

(20) Fantasy sports operators shall offer some fantasy sports contests open only to beginning players and that exclude highly experienced players. Operators of contests described in this subdivision (a)(20) shall:

(A) Implement and follow procedures to prevent highly experienced players from participating in such fantasy sports contests directly or through a proxy; and

(B) Suspend accounts of highly experienced players who participate in contests for beginning players only;

(21) Fantasy sports operators shall prohibit the use of scripts in fantasy sports contests that give players an unfair advantage over other players;

(22) Fantasy sports operators shall monitor all fantasy sports contests to detect the use of unauthorized scripts and ban players found to have used such scripts from further fantasy sports contests;

(23) Fantasy sports operators shall make all authorized scripts readily available to all fantasy sports players; provided, that a fantasy sports operator shall clearly and conspicuously publish its rules on what types of scripts may be authorized in the fantasy sports contest;

(24) Fantasy sports operators shall clearly and conspicuously disclose their rules regarding when a fantasy sports contest locks, thus allowing no further entries, changes to lineups, or substitution of players;

(25) Fantasy sports operators shall restrict the number of entries per fantasy sports contest per player, including, but not limited to, the following restrictions, which shall be clearly and conspicuously disclosed and enforced:

(A) Fantasy sports operators shall not allow players to submit more than one (1) entry in any fantasy sports contest involving twelve (12) entries or fewer;

(B) Fantasy sports operators shall not allow players to submit more than two (2) entries in any fantasy sports contest involving more than thirteen (13) entries but fewer than thirty-six (36) entries;

(C) Fantasy sports operators shall not allow players to submit more than three (3) entries in any fantasy sports contest involving thirty-six (36) or more entries but fewer than one hundred and one (101) entries;

(D) Except as otherwise provided in subdivision (a)(25)(E), fantasy sports operators shall not allow fantasy sports players to submit more than three percent (3%) of all entries in any fantasy sports contest involving more than one hundred (100) entries; and

(E) Fantasy sports operators shall be permitted to allow unlimited entries in no more than three percent (3%) of all fantasy sports contests, and the entry fee for such contests shall be a minimum of one hundred fifty dollars (\$150); and

(26) Fantasy sports operators shall protect player funds on deposit by, at a minimum:

(A) Segregating player funds from operating funds; and

(B) Maintaining a reserve for the benefit and protection of authorized players' funds in fantasy sports accounts;

(b) For purposes of this section "clearly and conspicuously":

(1) Means to disclose in such a way that the disclosure is made through the same means through which the communication is presented;

(2) Requires that if the communication is visual, the disclosure is placed in close proximity to relevant claims, expressed in clear and plain language and syntax, and the size, contrast, location, and other characteristics stand out from other visual elements so that the disclosure is prominently displayed and unavoidable;

(3) Requires that a disclosure is repeated if necessary, visible for a sufficient duration, and does not necessitate scrolling;

(4) Requires that if the communication is audio, the disclosure is presented at adequate volume and cadence; and

(5) Requires that the disclosure is made before the consumer makes a decision to accept an offer.

47-18-5606.

(a) A violation of § 47-18-5605 constitutes a violation of the Tennessee Consumer Protection Act of 1977, compiled in part 1 of this chapter. Any violation of § 47-18-5605 shall constitute an unfair or deceptive act or practice affecting trade or commerce and be subject to the penalties and remedies as provided in the Tennessee Consumer Protection Act of 1977, in addition to the penalties and remedies in this part.

(b) The attorney general and reporter shall have all of the investigative and enforcement authority that the attorney general and reporter have under the Tennessee Consumer Protection Act of 1977 relating to alleged violations of this part. The attorney general and reporter may institute any proceedings involving alleged violations of this part in Davidson County circuit or chancery court or any other venue otherwise permitted by law.

(c) No costs of any kind or nature shall be taxed against the attorney general and reporter or the state in actions commenced under this part.

47-18-5607.

(a) There is created a fund to be known as the "fantasy sports fund". Any fee or penalty collected pursuant to this part shall be deposited in the fantasy sports fund. Money in the fund shall be invested by the state treasurer in accordance with § 9-4-603. The fund shall be administered by the secretary of state.

(b) All costs of the secretary of state associated with the administration of this part shall be paid from the fund.

(c) If there is remaining any amount in the fantasy sports fund at the end of any fiscal year, ten percent (10%) of the remaining amount shall not revert to the general fund but shall remain available for the purposes set forth in subsection (b). Interest

accruing on investments and deposits of the fund shall be credited to such account, shall not revert to the general fund, and shall be carried forward into each subsequent fiscal year.

47-18-5608.

(a) The Uniform Administrative Procedures Act, compiled in title 4, chapter 5, shall govern all matters and procedures regarding the hearing and judicial review of any contested case arising under §§ 47-18-5603, 47-18-5604, and 47-18-5608.

(b) Any person may present charges to the secretary of state in writing against any licensee whose conduct allegedly violates this part. If it is determined that the licensee has violated this part, the secretary of state may, after notice and an opportunity for hearing, do any of the following or both:

(1) Suspend, refuse to renew, or revoke a license issued under this part;

(2) Impose a fine of not more than twenty five thousand dollars (\$25,000) per violation. The secretary of state shall promulgate rules pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, setting forth a range of fines for each violation.

(c) Any fantasy sports operator who engages in or offers to engage in fantasy sports contests with Tennessee consumers without a license, as required by this part, shall be ineligible to apply for a license for a period of twelve (12) months after the violation occurred.

(d) A license issued pursuant to this part shall expire on the last day of the twelfth month following its issuance and shall become invalid on that date unless renewed.

47-18-5609. The powers and remedies provided in this part shall be cumulative and supplementary to all powers and remedies otherwise provided by law.

47-18-5610. Nothing contained in title 39, chapter 17, part 5 or 6 shall be applicable to a fantasy sports contest conducted in accordance with this part.

47-18-5611.

(a) The secretary of state is authorized to promulgate rules, as the secretary of state may deem necessary, to effectuate the purposes of this act. All such rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) The secretary of state is authorized to carry out the provisions of this act through existing divisions within its office or by creating a new division as may be deemed necessary by the secretary of state.

SECTION 2. Tennessee Code Annotated, Section 39-17-501(1), is amended by deleting the "or" at the end of subdivision (1)(B), adding an "or" at the end of subdivision (1)(C), and adding a new subsection as follows:

(D) A fantasy sports contest as defined in § 47-18-5602 and conducted in accordance with the Fantasy Sports Act, compiled in title 47, chapter 18, part 56.

SECTION 3.

(a)

(1) Notwithstanding this act to the contrary, the secretary of state and other state and local entities shall allow fantasy sports operators that are operating in this state as of the passage of this act to continue to legally operate until the later of:

(A) A fantasy sports operator obtaining a fantasy sports operator license; or

(B) Sixty (60) days after applications for licensure as a fantasy sports operator are made available to the public by the secretary of state.

(2) The secretary of state shall have until July 1, 2016, to make applications for fantasy sports operator licenses available, and thirty (30) days after receiving an initial application for such license to issue or deny the license.

(b) Any fantasy sports operator operating in this state without a license after the later of the events described in subsection (a) shall be in violation of § 39-17-503.

SECTION 4. If any provision of this act or its application to any person or circumstance is held invalid, then all provisions and applications of this act shall be invalid and void.

SECTION 5. For purposes of promulgating rules and for purposes of § 47-18-5610, SECTION 2, and SECTION 3, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2016, the public welfare requiring it.